

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 27 July 2005

CASE NO.: 2005-LHC-652
OWCP NO.: 06-193025

In the Matter of:

ROBERT T. CLARKE,
Claimant,

v.

LABOR FINDERS,
Employer,

and

CNA CASUALTY,
Carrier.

**DECISION AND ORDER APPROVING SETTLEMENT
AND AWARDING ATTORNEY FEES**

On July 25, 2005, the parties filed a Settlement Agreement Pursuant to Section 8(i) of the Longshore and Harbor Workers' Compensation Act ("Act") accompanied by a proposed Order Approving Agreed Settlement. The application is signed by Timothy B. Guillory, counsel for Labor Finders ("Employer") and its carrier CNA Casualty ("Carrier"), by John Sharpless, counsel for Claimant, and by Robert T. Clarke ("Claimant").

According to the terms of the settlement agreement submitted by the above-named parties, Claimant is to receive a lump sum payment of \$10,000.00, representing \$6,500.00 for the future costs of medical care and \$3,500.00 for past-due indemnity benefits. Employer and Carrier further agree to pay Claimant's attorney a fee of \$5,000.00 including costs.

With respect to the specific terms of the settlement agreement, I have reviewed it in its entirety in accordance with the requirements of 20 C.F.R. §702.243(f). Jurisdiction under the Act is undisputed. The form and substance of the application conform to the requirements of 20 C.F.R. §702.242.

The facts giving rise to this claim are that Claimant, while employed by Employer on April 19, 2003, was carrying pipe when the load shifted jerking his right wrist and aggravating his carpal tunnel syndrome. Employer thereafter furnished medical services pursuant to Section 7 of the Act. Claimant was examined on June 9, 2003 by Dr. W. Christopher Patton in Mobile, Alabama for continued right wrist and right hand complaints. Dr. Patton recommended an ENG

study and placed Claimant on light duty. On June 26, 2003, Dr. Charles Hall, a neurologist, performed an ENG study which showed carpal tunnel syndrome in the right wrist. On July 30, 2003, Dr. Patton reported that Claimant was responding to conservative treatment but felt there was a fifty percent chance that he would need carpal tunnel release surgery. However, Claimant advised Dr. Patton that he intended to move to Tampa, Florida to pursue mission work. On December 2, 2003, Claimant was examined by Dr. Cecil Aird of the Tampa Bay Hand Center who diagnosed carpal tunnel syndrome and recommended another nerve conduction study. On February 11, 2004, Dr. Aird performed on Claimant a right carpal tunnel release with hand flexor tenosynovectomy. Dr. Aird further determined that Claimant had reached maximum medical improvement on March 26, 2004, he had a zero percent permanent partial impairment rating at that time, and he did not recommend any further surgery.

The parties agree that Claimant's average weekly wage at the time of his injury was \$540.25 with a compensation rate of \$360.18. Claimant has not returned to work for Employer and instead has chosen to attend school to become a minister, thus voluntarily withdrawing from the work force.

A dispute presently exists over the amount of past temporary partial disability benefits owed to Claimant. Claimant alleges that he is due approximately \$6,500.00 for temporary partial disability benefits between the time he moved to Tampa, Florida to study for the ministry and the time of his February 11, 2004 surgery. Employer asserts that Employee is not due any benefits for that period of time because Employee voluntarily withdrew from the work force. Employer also asserts a credit of \$4,808.66 for an inadvertent overpayment of benefits to Claimant from February 19, 2004 through May 9, 2004 at a mistaken compensation rate of \$523.93 per week. In light of the dispute between Claimant and Employer, they have agreed that the sum of \$3,500.00 of the \$10,000.00 lump sum payment is to be dedicated to any alleged past due indemnity benefits and the remaining \$6,500.00 is dedicated toward any future medical treatment which Claimant may require. However, as noted above, the need for future medical treatment is doubtful given Dr. Aird's finding of no impairment and maximum medial improvement as of March 26, 2004.

Claimant, who was born on September 18, 1959 and is now 45 years of age, is divorced, has a college education, and has the ability to read, write, and perform basic arithmetic. The parties agree that it is in their best interest to settle this claim in its entirety for a lump sum payment of \$10,000 to Claimant to be apportioned as set forth above. As noted above, Dr. Aird has determined that Claimant reached maximum medical improvement on March 26, 2004, has a zero percent permanent partial impairment rating, and further surgery is not recommended. Based on Dr. Aird's findings, any future medical treatment for Claimant's injury is doubtful. To date, Carrier has expended \$1,299.84 in 2003, \$5,475.86 in 2004, and nothing in 2005 with respect to medical care for this claim. Claimant reports no collateral sources of income for payment of medical expenses, and he attests that the proposed settlement has not been procured by duress.

I find, considering all the circumstances of this case, that the amount of the settlement is adequate and reasonable, and that the proposed settlement for compensation has not been procured by duress. Claimant is represented by John Sharpless, and he and his attorney have

read and approved the terms of the settlement. Furthermore, I have reviewed the Affidavit of Attorney's Time filed by Claimant's attorney and find that the fees and costs set forth therein are reasonable.

The findings contained herein are based upon the agreed facts and representations contained in the Agreed Settlement and attachments and the Affidavit of Attorney's Time, copies of which are attached hereto, incorporated herein, and made part hereof.

ORDER

In accordance with 20 C.F.R. §702.243, it is hereby **ORDERED** that the Agreed Settlement Pursuant to Section 8(i) submitted for approval, which agreement includes a provision for payment of the attorney fees and costs set forth in the accompanying Affidavit of Attorney's Time, is **APPROVED**, and the parties are directed to carry out the requirements of the settlement.

IT IS FURTHER ORDERED that, upon completion of the requirements of the Settlement Agreement, the past and future liability of Labor Finders and CNA Casualty for payment of compensation and medical expenses under the Act as a result of Claimant's April 19, 2003 injury to his right wrist are **TERMINATED** and **DISCHARGED**.

A

STEPHEN L. PURCELL
Administrative Law Judge

Washington, D.C.